

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ANTIOCH UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012070716

ORDER GRANTING IN PART
REQUEST FOR CONTINUANCE AND
SETTING MEDIATION AND DUE
PROCESS HEARING

On September 13, 2012, the parties filed a joint request to vacate the first day of the due process hearing in this matter, to set mediation and to continue the due process hearing. This matter is currently set for a due process hearing on September 17, 19 and 20, 2012. The Office of Administrative Hearings (OAH) considers the parties' request for mediation on September 17, 2012, as a request for mediation pursuant to Education Code section 56501, subdivision (b)(2). The parties further request that September 19, 2012, be vacated due to witness unavailability. Accordingly, they request mediation on September 17, and a due process hearing on September 20, 2012.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Granted in part and denied in part. The due process hearing set for September 17, 2012, will be vacated and a mediation will be set for that day. The parties have not established good cause to vacate September 19, 2012, in the event this matter does not settle. Accounting for the overlapping witnesses on each party's witness list, the parties have identified 17 witnesses in this matter, if all are called to testify. They have failed to provide any details, other than to assert witness unavailability, which would establish that all 17 witnesses are unavailable on September 19, 2012. Accordingly, the request to vacate September 19, 2012, as a day of hearing is denied. This matter will be set as follows:

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| Mediation: | September 17, 2012, at 9:30 AM |
| Due Process Hearing: | September 19 – 20, 2012, at 9:00 AM |

IT IS SO ORDERED.

Dated: September 14, 2012

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings